vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4357 OF 1996

Shir Dhanpal Krishna Yadav ... Petitioner

V/s.

The Managing Director
Vasantdada Shetkari Sahakari
Sakhar Karkhana Ltd., Sangli ... Respondent

Mr.M.S. Topkar for Petitioner

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **NOVEMBER 27, 2006**

ORAL JUDGMENT:

. This Writ Petition challenges the order of the Labour Court passed under section 33-C(2) of the Industrial Disputes Act. The Petitioner had claimed amounts under several heads by filing an application under section 33-C(2) of the Act. The Labour Court has rejected his claim in toto.

2. Undisputedly, the Petitioner was working as a clerk with the Respondent Karkhana from 1.3.1967 to 20.4.1992. In his application, the Petitioner claims that he was unwell from 14.1.1986 and was required to undergo treatment at Dr.Joshi Hospital, Rajwada, Sangli and Krishna Hospital, Karad. The Petitioner also claims that he had suffered a heart attack and, therefore,

required constant medical treatment. The Petitioner has stated that the Karkhana had accepted the recommendations of the III Wage Board for the Sugar industry by a settlement with the Union dated 25.4.1990. Under the settlement, any employee who suffered from the several diseases mentioned in the recommendations, including a heart attack, was entitled to reimbursement of the medical expenditure incurred by him. At the same time, the workman was entitled to paid leave as and when he was on leave due to his illness. The Petitioner had not had the medical bills issued to him sanctioned by the medical officer of the Karkhana which was stipulated in the settlement accepting the III Wage Board recommendations. Despite this, it appears that the Karkhana vide a resolution decided to pay a certain amount to the Petitioner as reimbursement of medical expenses on humanitarian grounds. The leave wages were not paid to the workman and therefore, he claimed Rs.25,000/- as wages payable from 1.5.1991 to 13.4.1992. The other claims which the workman had made were with respect to interest on the contributions towards provident fund and family pension amounting to Rs.6800/- and Rs.8135/- respectively. The Petitioner thus claimed an amount of Rs.119,935/-.

3. The main contention raised by the Karkhana was

that it had not accepted the recommendations of the Wage Board by any agreement or settlement with the union and therefore, these recommendations were not applicable to the workmen. It was also contended that the workman had accepted voluntary retirement on 20.4.1992 and in fact had not worked from 14.1.1986 onwards. It was also contended that the Petitioner had not had the medical bills produced by him verified by the medical officer of the Karkhana and, therefore, he had no right to claim any amount as reimbursement.

4. The Labour Court accepted the contentions of the Karkhana and dismissed the application. According to the Labour Court, although the workman proved that he had suffered from a heart ailment by producing medical records from the two hospitals, as also by examining the Doctor, who treated him he was not entitled to reimbursement of the medical expenses. Moreover, it was held that there is no agreement, award or settlement on which the Petitioner had based his claim and therefore, he had not established that he had any existing right to the amount claimed by him.

5. Mr.Topkar, learned Advocate for the Petitioner, submits that the petitioner has in fact restricted his claim to the amounts payable as medical reimbursement

and as wages for the period during which he was on leave. The learned Advocate fairly concedes that the Petitioner would not be entitled to bonus for the period that he had claimed as he had not actually worked during that period. He also accepts that the provident fund and family pension is payable under the Employees Provident Fund Act and the scheme framed thereunder and therefore, a claim under section 33-C(2) of the I.D. Act would not be maintainable for these amounts. The learned Advocate then points out that the recommendations of the III Wage Board applicable to the sugar industry have been accepted by the Karkhana by a settlement of 25.4.1990 with the union. A workman is entitled to medical reimbursement as well as wages for the leave period as per the recommendations. He submits that besides this settlement a resolution was passed by a Sub-Committee under which the management of the Karkhana had decided to pay one year’s reimbursement to the workman, despite the fact that he had not submitted the medical bills. This was paid on humanitarian grounds.

6. Clause 12 of the settlement dated 25.4.1990 entitles a workman who is unwell on account of various ailments including a heart ailment to full wages for the leave period depending upon the medical certificates

produced by him. Besides this, the workman is also entitled to reimbursement of medical expenses incurred provided the medical officer of the Karkhana certifies them to be true. In the present case, admittedly, the medical officer of the Karkhana had not certified the expenses incurred on medical bills by workman. Therefore, the Labour Court has rightly rejected the claim made in the application under this head.

7. However, the workman has proved through evidence both documentary and oral, that he was suffering a heart ailment during the period that he was absent from work. It has also been proved adequately by the workman by examining the Doctor who treated him, that he was treated in the two hospitals both as an inpatient as well as outdoor patient. It has also been proved that he was on leave for that entire period from 1986 onwards. Clause 12 of the settlement stipulates that there should be medical certificates indicating that the workman was unable to attend duty during a particular period and on that basis, he had availed of leave. He would then be entitled to wages for this leave period. In my opinion, the Labour Court was in error by disallowing the claim made by the applicant with regard to the leave period. Although the resolution which has been passed giving him medical reimbursement for the

expenses incurred by him for one year, there is no material on record to indicate that the Karkhana had paid him leave wages to which he was entitled to. Hence, the Karkhana shall pay to the workman wages for the period during which he was on leave which has been proved by the medical certificates produced by him on record.

8. In the result, the order of the Labour Court is set aside with regard to the payment of leave wages only. Rule thus made absolute accordingly.

9. Writ Petition stands disposed off.